



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 19 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Steven J. Levine
Phelps Dunbar LLP
II City Plaza
400 Convention Street, Suite 1100
Baton Rouge, Louisiana 70802

RE: Aqua Yacht Harbor
Consent Agreement and Final Order (CAFO)
Docket No. CWA-04-2012-5126(b)

Dear Steve:

Enclosed please find the Consent Agreement and Final Order (CAFO) resolving the Clean Water Act Section 311(b)(3), 33 U.S.C. § 1321(b)(3), violation at the Aqua Yacht Harbor marina, located in Iuka, Mississippi. Please review and sign the Consent Agreement (or forward the Agreement to the appropriate facility representative for signature). The signed **original** should be returned to me within 14 days for signature by the Environmental Protection Agency (EPA) Region 4's duly delegated official.

Once all signatures are obtained, the Consent Agreement will be subject to public comment. If you have any questions, please feel free to contact me at (404) 562-9685.

Sincerely,

A handwritten signature in cursive script that reads "Colleen E. Michuda".

Colleen E. Michuda
Associate Regional Counsel
Office of Environmental Accountability

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF)
)
Flagship Aqua Yacht, LLC)
3832 Highway 25)
Iuka, Mississippi 38852)
)
Respondent)
_____)

CWA SECTION 311 CLASS II
CONSENT AGREEMENT AND
FINAL ORDER
UNDER 40 C.F.R. § 22.13(b)

Docket No. CWA-04-2012-5126(b)

**RECEIVED
EPA REGION IV
2012 JUN 19 AM 10:42
HEARING CLERK**

LEGAL AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities to the Director, RCRA Division (“Complainant”) pursuant to EPA Region 4 Clean Water Act Delegation 2-52-A.

CONSENT AGREEMENT

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (CAFO), and Respondent hereby agrees to comply with the terms of this CAFO. For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, Flagship Aqua Yacht, LLC, is a limited liability company organized under the laws of Delaware and is registered to do business in the State of Mississippi. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).
2. Respondent is the “owner” and “operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an underground storage tank (UST) system located at 3832 Highway 25 in Iuka, Tishomingo County, Mississippi (“the facility”), which is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
3. Pickwick Lake is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and is therefore subject to the jurisdiction of Section 311 of the CWA.
4. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.
5. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the determination of quantities of oil that may be harmful and thereby prohibited under Section 311(b)(3), 33 U.S.C. § 1321(b)(3), is defined at 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

6. On or about January 1, 2010, due to an unanticipated structural failure, an underground pipe at Respondent's facility discharged approximately 166 barrels of fuel (which is included within the definition of "oil" in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1)), into the soil.

7. A portion of the released fuel migrated through the subsurface toward Pickwick Lake, where a detectable sheen occurred, in violation of Section 311(b)(3) of the CWA.

Waiver of Rights

8. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Penalty

9. Respondent consents to the assessment of a civil penalty of Seventeen Thousand, Seven Hundred Eighty-Two Dollars (\$17,782.00).

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

10. Respondent shall pay the amount of Seventeen Thousand, Seven Hundred Eighty-Two Dollars (\$17,782.00), plus One Hundred Fifty-Five Dollars and Seventy-Eight Cents (\$155.78) in interest, in eight (8) quarterly installment payments of Two Thousand, Two Hundred Forty-Two Dollars and Twenty-Two Cents (\$2,242.22), with the first payment due no later than 30 days after the effective date of the Final Order, and the remaining payments due every three (3) months thereafter. Respondent shall make its payments by means of a corporate cashier's or certified check, by electronic funds transfer

(EFT), or on-line. If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to the "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and Respondent shall note the title and docket number of this case.

If Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by an overnight commercial delivery service, such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
314-418-1028

If Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

If paying online, Respondent should access this payment option at www.pay.gov. Enter sfo 1.1 in the search field and then open the form and complete required fields.

11. Respondent shall submit copies of the check(s) (or, in the case of wire transfers or on-line payments, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and

Larry Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

12. Penalties paid pursuant to this CAFO are not deductible for federal purposes under 26 U.S.C. § 162(f).

13. Respondent's failure to pay the penalty assessed by the Final Order in full pursuant to the payment schedule set forth in Paragraph 10 above, may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

14. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

15. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, and successors or assigns.

16. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein. Except as otherwise set forth herein, compliance with this Consent Agreement shall resolve the allegations of violations contained herein.

17. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

18. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Colleen E. Michuda
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
404-562-9685
michuda.colleen@epa.gov

19. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

Steven J. Levine
Partner
Phelps Dunbar, LLP
II City Plaza
400 Convention Street, Suite 1100
Baton Rouge, Louisiana 70802-5618
225-376-0220
levines@phelps.com

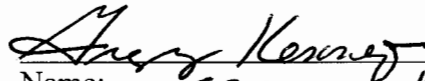
Effective Date

20. This Consent Agreement and Final Order is effective when it is filed with the Regional Hearing Clerk.

CONSENTED AND AGREED TO:

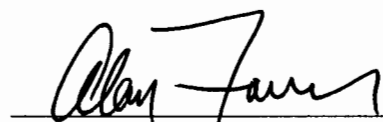
FLAGSHIP AQUA YACHT, LLC

Date: 4/11/12


Name: Gregory Kealey
Title: General Partner

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/24/12


G. Alan Farmer
Director
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**


IN THE MATTER OF)	CWA SECTION 311 CLASS II
)	CONSENT AGREEMENT AND
Flagship Aqua Yacht, LLC)	FINAL ORDER
3832 Highway 25)	UNDER 40 C.F.R. § 22.13(b)
Iuka, Mississippi 38852)	
)	
Respondent)	Docket No. CWA-04-2012-5126(b)
_____)	

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

Flagship Aqua Yacht, LLC, the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2012-5126(b).

Date: 6/13/2012

Signature: 
for Gwendolyn Keyes Fleming
Regional Administrator

In the Matter of Flagship Aqua Yacht, LLC
Docket Number: CWA-04-2012-5126(b)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Flagship Aqua Yacht, LLC, Docket No. CWA-04-2012-5126(b), on the parties listed below in the manner indicated:

Colleen E. Michuda
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(Via EPA internal mail)

Quantindra Smith
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

(Via EPA internal mail and PDF)

Mr. Steven J. Levine
Phelps Dunbar LLP
II City Plaza
400 Convention Street, Suite 1100
Baton Rouge, Louisiana 70802

(Certified Mail, Return Receipt Requested)

Dated this 19 day of June, 2012.



Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9511